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Supreme Court of the United States

October Term, 1971

~~No. 453~~ 71 - 453

LEWIS H. SWORD, ET AL.,
Petitioners,

v.

JAMES W. FOX, ET AL.,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

PRELIMINARY STATEMENT

Respondents, believing that the matters set forth herein will demonstrate the lack of substance in the questions sought to be reviewed by petitioners, file this brief in opposition and pray that this Court refuse to issue the writ of certiorari sought by petitioners because the opinion of the United States Court of Appeals for the Fourth Circuit does not merit review under any of the considerations contained in Rule 19 of the Rules of the Supreme Court of the United States.

PRIOR PROCEEDINGS

This case was initiated when the petitioners, students at Madison Coliege (hereinafter referred to as students), filed

a class action complaint against certain Madison College officials and others in the United States District Court for the Eastern District of Virginia challenging the constitutionality of rules 1 and 4 of the Madison College regulations governing demonstrations. The case was transferred to the Western District of Virginia, after which the Court ruled that the definition of demonstration as used in the regulations, rules 1 and 4, and a provision relating to disbanding were unconstitutional either facially or as applied.

The College officials appealed the District Court's judgment to the United States Court of Appeals for the Fourth Circuit. That Court reversed the judgment of the District Court and ordered the case remanded with instructions to dismiss.

The students now seek a writ of certiorari to review the judgment of the Court of Appeals.

QUESTIONS PRESENTED

1. Whether The Students May Properly Raise Issues At This Time Which They Did Not Raise Before The District Court And Which Are Irrelevant To The College Disciplinary Proceedings Involving The Students?

2. Whether The Court Of Appeals Applied The Correct Standard And Reached The Correct Result When It Determined That The Madison College Prohibition Against Demonstrating Inside Buildings Was Constitutional And Not Overly Broad?

3. Whether The Madison College Regulations Are Instruments For Censoring Or Controlling The Purpose Or Content Of A Demonstration?

4. Whether The Students' Conduct Was Constitutionally Protected And, If Not, Whether They Have Standing To Challenge The Madison College Regulations?

STATEMENT OF THE CASE

Madison College is a state supported institution of higher learning located in Harrisonburg, Virginia. The College has approximately 4,000 students, most of whom are women.

Prior to stating the facts giving rise to this case, it is first important that the Court understand the Madison College regulations which were the subject of the District Court's ruling and the manner in which those regulations are applied. In addition to rules 1 and 4 put in issue by the students, the District Court passed on two other parts of the College regulations. The regulations, including rules 1 and 4, which the District Court deemed pertinent are as follows:

> A demonstration is considered to be a public manifestation of welcome, approval, protest, or condemnation as by a mass meeting, procession, picketing, or occupation of premises. (Exhibitions commonly associated with social or athletic activities are not within the purview of this policy and its supporting regulations.)
>
> * * *
>
> Rule 1: The demonstration is to be registered with the Office of Student Activities 48 hours in advance.
>
> * * *
>
> Rule 4: Demonstrations are forbidden in the areas of the Health Center, inside any buildings and congregating in the locations of fire hydrants. The appropriate areas for demonstrations will be determined at the time of the request.
>
> * * *
>
> When an assembly of students not authorized by the Dean of Student Services, the Dean of Men or the Dean of Women has been requested to disband by the President or by an officer of the Student Government Organization or Student Government Association, or by a dean or other administrative officer, those students refusing to comply will be subject to immediate suspension.

That the District Court exceeded the scope of the pleadings when it ruled that the definition of demonstration and the disbanding requirement were either facially unconstitutional or unconstitutional as applied is made clear by the students' motion for summary judgment [1] in which they state:

> The only question in controversy is the constitutionality of Rules 1 and 4 of the Madison College Regulations on Demonstrations and Peaceful Assembly. . . .

If the student gathering is a meeting which does not fall within the definition of a demonstration, then College regulations permit students to use available building space. (P. App. 3a) [2] There is no evidence to suggest that the College ever attempted to regulate the content of First Amendment expression at such meetings.

If a student gathering falls within the definition of demonstration, then registration must be made with the Director of Student Activities who registers demonstrations. Uncontradicted testimony accepted by the Court of Appeals demonstrated that over the years the administrators have gained sufficient experience to determine whether the gathering is a meeting or a demonstration. (P. App. 3a) Not only do the students understand the differentiation, they have made no claim that they do not. Moreover, they unhesitatingly attempted to register the demonstration here in question pursuant to the regulations governing demonstrations.

As found by the Court of Appeals,

> One of the witnesses called by the plaintiffs, a student who had engaged in the "sit-ins" involved in this action,

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[1] Copies of the students' motion for declaratory relief and their motion for summary judgment upon which the District Court acted are appended to this brief as Appendix A and Appendix B respectively.

[2] P. App. as used in this brief will refer to the Appendix contained in petitioners' brief.

> testified that, while written application to register a demonstration was required, the registrant did not set forth thereon the purpose of the demonstration, only the time the demonstration was to begin and the areas where it was to be held; and that except for "making a few changes in some of the areas where the demonstration was to be held", "automatic approval" of the registration followed. [Footnote omitted.] Thus the regulations, neither by their language nor by their application, are instruments for censoring or controlling the purpose or content of a demonstration. (P. App. 3a)

The Court of Appeals further found that no attempt was made to control or even influence the purpose of the students' demonstration here in question, or, so far as the record shows, any other demonstrations on campus. (P. App. 6a)

During the hearing below, Dr. Miller, president of the College for nearly twenty years, explained the justification for rule 1 which requires registration of a demonstration:

> The 48 hour rule was established to provide opportunity to find an appropriate place and to obtain the necessary staff, if there were to be a large number of students desiring to demonstrate.

The 48 hour requirement was originally established because of some anticipation that there might be large groups demonstrating and the College would be required to place more personnel on notice to guard against disruptiveness. In practice, however, the 48 hour requirement of the rule is "not adhered to unless it [is] important to do so because of the size, potential size of the demonstration."

James Fox, Dean of Student Services, who is charged with enforcing these regulations, also made clear the College's position that the 48 hour requirement would be waived if necessary when he stated, "If the time was important, if the

time element was important we have waived the time element before." Dean Fox emphatically answered in the negative the District Court's question whether students would be denied the opportunity of welcoming the President of the United States should he appear on campus without 48 hours notice. While not deeming it necessary to rule on the 48 hour requirement, the Court of Appeals noted that the regulation was liberally applied. (P. App. 7a)

Dr. Miller also discussed rule 4 forbidding demonstrations inside buildings and explained that:

> The purpose of this rule was to protect the property and the rights of other members of the college community. This rule was approved by the Board of Visitors after careful consideration that it was necessary to have a rule to prevent demonstrations inside of buildings, because of the possible damages that could occur in mass hysteria . . . which could not only damage property but also might have serious interference with the rights of other people [using] a building.

The Court of Appeals accepted Dr. Miller's testimony, given without contradiction, that, to his knowledge, the regulations have never been applied "to prohibit the desire of students to meet and demonstrate in areas of the campus." (P. App. 2a) It is noteworthy that three days after the demonstration here in question the students demonstrated on campus to protest their pending disciplinary charges and the College's failure to continue the employment of certain members of the faculty. This subsequent demonstration was registered without any difficulty and there was no attempt by the College to censor its content or to control or limit its purposes. (P. App. 5a)

The factual incidents which gave rise to this case occurred during the end of April, 1970. On Thursday night a number of students gathered in a meeting to have a free university.

Later they held a demonstration to protest the non-reappointment of several faculty members. This demonstration had been registered and a certain area was designated for the students' use. After going to the designated area, the students marched to Wilson Hall where they decided to spend the night so that they might be present when Dr. Miller appeared at his office in the morning. Wilson Hall is the main administrative building at Madison College. It also contains classrooms and an auditorium. The students were told to disperse and there is some indication that they were threatened with disciplinary action if they failed to do so.

Apparently upset by the alleged threat of disciplinary action, the students decided to hold another demonstration. Following the procedures for demonstrations, the students attempted on Friday to register a demonstration in Wilson Hall to be held Sunday night. Dean Fox refused to accept the registration because the location of the demonstration would bring the participants in violation of rule 4. (P. App. 4a)

Despite the fact that the registration was not accepted, the students proceeded to attempt to hold the demonstration in Wilson Hall. The demonstration was defined as an all night sit-in by which the students were going to try to manifest their concern to Dr. Miller.

A crowd of approximately 100 to 150 persons gathered in front of the building. The students inside the building attempted to persuade the persons outside to come into the closed building. Some persons outside responded by climbing through windows and one climbed onto a porch roof and through a second floor window. At one point the students inside chanted to urge the students to enter the secured building. Several students had musical instruments and they sang songs to pass the time. There was "certainly a good bit of

noise at different times throughout the demonstration." The students were, however, nonviolent and caused no property damage.

At approximately 9:30 p.m. Dean Fox entered the building and warned the students to disperse and leave Wilson Hall or be subject to disciplinary action. When the students refused to cease violating the rules and after warning them another time of the consequences of their refusal, the college officials procured warrants for their arrests. By the time the police arrived to effectuate the arrests, the crowd inside the Wilson Hall lobby had swelled to 65 or 70 persons.

Several weeks later and after a hearing was held, many of the students were disciplined by the College for participation in the demonstration. The disciplinary action stemmed from holding the demonstration inside the building and not from the 48 hour portion of rule 1. (P. App. 7a) It was this disciplinary action which precipitated the filing of this case.

REASONS FOR DENYING THE WRIT

ARGUMENT I

The Students May Not Properly Raise Issues At This Time Which They Did Not Raise Before The District Court And Which Are Irrelevant To The College Disciplinary Proceedings Involving The Students.

The students who initiated this case sought from the District Court a declaration that rule 1 requiring registration 48 hours in advance and rule 4 prohibiting demonstrations inside any buildings were unconstitutional. At no place in their complaint, motion for declaratory relief or motion for summary judgment did the students request the District Court to declare the definition of the term demonstration as used in the Madison College regulations unconstitutionally vague. Indeed, before the Court of Appeals, the students

conceded that the definition of demonstration is "based on terms which are susceptible to common understanding." (P. App. 17a)

Nor did the students ask the District Court to rule on the constitutionality of the disbanding regulation authorizing immediate suspension. In their motion for summary judgment, the students clearly asserted that the "only question in controversy is the constitutionality of Rules 1 and 4. . . ."

Undoubtedly, the students' failure to attack the demonstration definition was caused by their ability to understand easily the meaning of that definition while their failure to attack the disbanding regulation which authorized immediate suspension stemmed from the fact that they were not immediately suspended and were not disciplined by the College until after a hearing had been held some weeks later.

Because the students did not properly raise those issues before the District Court, that Court erred when it considered those issues in formulating its opinion. *Armstrong Cork Co.* v. *Lyons*, 366 F.2d 206, 208 (8th Cir. 1966). The fact that the District Court's opinion is predicated upon its finding that the definition is unconstitutional compounds the error. (P. App. 37a) The students' failure to timely raise these issues precludes them from asserting them now. Rule 16 (1) (b), Rules of the Supreme Court of the United States.

Assuming, arguendo, that all issues were timely raised, however, the Court of Appeals properly held that the students had standing only to attack that rule under which they were threatened with disciplinary action, that is, the prohibition against demonstrating inside college buildings. (P. App. 7a) This precludes the students from attacking any portion of the regulations other than rule 4. The other portions of the regulations are simply not involved in this case.

To consider the other portions now would do violence to the well established rule to which this Court has rigidly ad-

hered, that is, a court should not anticipate a question of constitutional law in advance of the necessity of deciding it. *United States* v. *Raines,* 362 U.S. 17, 21 (1960); see *LeClair* v. *O'Neil,* 307 F. Supp. 621 (D. Mass. 1969, *aff'd,* ..... U.S. ....., 91 S. Ct. 1219 (1971). Also directly in point and supportive of the Court of Appeals' decision regarding standing is the case of *Bayless* v. *Martine,* 430 F.2d 873, 878 (5th Cir. 1970), where that court held that students did not have standing to complain of a 48 hour registration requirement when it had not been applied to them.

This Court's holding in *Dombrowski* v. *Pfister,* 380 U.S. 479 (1965), does not give the students standing to attack regulations with which they are not threatened. The relevant portion of that case concerned standing to attack statutes under which prosecution is threatened in bad faith.

ARGUMENT II

The Court Of Appeals Applied The Correct Standard And Reached The Correct Result When It Determined That The Madison College Prohibition Against Demonstrating Inside Buildings Was Constitutional And Not Overly Broad.

In their petition, the students first assert that college regulations regarding expression must be tested by general First Amendment standards and that the District Court, in considering the Madison College regulations, adopted those standards while the Court of Appeals adopted different standards. The students further claim that the various Circuits are confused as to the applicable standards. In advancing these claims, the students are in error.[3] Courts may reach

[3] All of the cases the students cite on page 8 of their brief for the purpose of showing "confusion and disarray . . . among the Circuits" rely heavily on *Tinker* v. *Des Moines Independent Community School Dist.,* 393 U.S. 503 (1969), except *Brooks* which relies upon cases cited with approval in *Tinker.*

different results in applying the standard, but there is virtual unanimity among the courts over the applicable standard.

The District Court, properly relying on this Court's opinion in *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969), recognized that First Amendment guaranties must be "applied in the light of the special characteristics of the school environment. . . ." (P. App. 30a). The District Court also recognized that "reasonable and equally enforced regulation of the time, place, manner and duration of forms of expression less pure than speech alone is permissible." (P. App. 35a).

The Court of Appeals, in reversing the District Court, also applied the reasonableness test. (P. App. 10a) This approach was clearly approved in *Tinker,* 393 U.S. at 513, where this Court stated:

> The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances.

Thus both courts applied the same standard, only differing in their result.

The Court of Appeals was of the opinion that the Madison College regulations governing demonstrations, a less protected mode of expression than that considered in *Tinker,* were reasonable. Madison College imposes no limitations on methods of expression involving "direct, primary First Amendment rights akin to 'pure speech.' " Students may wear armbands or buttons, conduct discussions or verbally express themselves on any subject without being subject to limitations. They may not, however, hold demonstrations inside college buildings.

That Madison College may distinguish between demonstrations and other more pure methods of expression is not subject to question. *Cox* v. *Louisiana*, 379 U.S. 536, 555 (1965). It is important to note that Madison College even permits demonstrations at any campus location out-of-doors with the limited exception of the health center area and the areas around fire hydrants.

The students complain that the prohibition against demonstrating inside buildings is overly broad. *Davis* v. *Francois*, 395 F.2d 730 (5th Cir. 1968), relied upon by the students, is easily distinguishable. That case concerned a statute imposing severe restrictions on picketing "on private property or on the streets and sidewalks of the City of Port Allen." *Davis* does not concern a prohibition against demonstrations inside buildings as the quotation which the students have included in their petition, out of context, would lead one to believe.[4] Madison College permits picketing on its campus sidewalks, streets and grounds with certain narrow exceptions.

Wolin v. *Port of New York Authority*, 392 F.2d 83 (2nd Cir. 1968), *cert. denied* 393 U.S. 940, relied upon by the students, concerned the right to distribute handbills in a portion of a building which was actually used as a street. There is nothing to suggest that Madison College would limit the distribution of handbills in any portion of any building to which the public has access. Therefore *Wolin* is also distinguishable.

Edwards v. *South Carolina*, 372 U.S. 229 (1963), another case which the students claim for support, involves demonstrations on the capitol grounds of South Carolina. Madison

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[4] Two of the three judges in *Davis* v. *Francois* joined in ruling that a peaceful student demonstration was not protected expression in *Bayless* v. *Martine*, 430 F. 2d 873 (5th Cir. 1970). The third judge on the *Davis* panel did not sit on the *Bayless* panel.

College allows demonstrations on nearly all of its campus grounds. *Edwards* is therefore of no aid to the students.

The final case relied upon by the students is *Brown* v. *Louisiana*, 383 U.S. 131 (1966). The prevailing opinion there holds that there was insufficient evidence to sustain the convictions for breach of the peace. There is also *dicta* concerning equal protection of the law and freedom of expression. As noted by the Court of Appeals in the instant case, the minority in *Brown* became the majority in *Adderley* v. *Florida*, 385 U.S. 39 (1966), where this Court upheld the trespass convictions of protesters who were peacefully demonstrating on the jail house grounds.

While the students' claim of overbreadth is bankrupt of judicial support, the Court of Appeals' finding that the Madison College prohibition against demonstrations inside buildings is constitutional is supported by a wealth of authority. *Bayless* v. *Martine*, *supra*, which upheld a college regulation limiting demonstrations to a narrow area of the campus, supports the Court of Appeals' finding as does *Abernathy* v. *Conroy*, 429 F.2d 1170 (4th Cir. 1970), which held constitutional a statute prohibiting night parades. In *Grossner* v. *Trustees of Columbia University*, 287 F. Supp. 535, 552 (S.D.N.Y. 1968), that court held "there is no question as to the reasonableness of" a regulation prohibiting all demonstrations within any university buildings and thereby upheld a regulation similar to the one in question.

This Court has upheld certain prohibitions of various modes of First Amendment expression in locations which are open to the general public. *Cameron* v. *Johnson*, 390 U.S. 611 (1968). Certainly the Court of Appeals' well reasoned opinion which is amply documented with authority demonstrates the necessity of upholding Madison College's limited prohibition of one mode of First Amendment expression.

The regulations of Madison College do not even suggest that the College is seeking to prevent First Amendment conduct completely, as the students suggest. As stated before, Madison College permits demonstrations at all out-of-doors locations with certain narrow exceptions and permits a wide range of various methods of First Amendment expression inside buildings.

Indeed, three days after the demonstration in question, the students properly registered and held a demonstration protesting the same grievances. (P. App. 5a) Clearly this regulation is an appropriate method of protecting the College, its property and student body from the disruptions which are attendant to even the most orderly demonstrations. See *Esteban* v. *Central Mo. State College*, 415 F.2d 1077, 1089 (8th Cir. 1969); *Evers* v. *Birdsong*, 287 F. Supp. 900, 905 (S.D. Miss. W.D. 1968)

ARGUMENT III

The Madison College Regulations, Neither By Their Language Nor By Their Application, Are Instruments For Censoring Or Controlling The Purpose Or Content Of A Demonstration.

The students' claim that the regulations afford Madison officials unbridled discretion to prevent the exercise of First Amendment rights is without merit. The definition of the term demonstration as used in the regulations is not vague, for, as the student conceded before the Court of Appeals, the definition is "based on terms which are susceptible to common understanding." (P. App. 17a) The students attempted to register their protest as a demonstration and there is no contention that they did not understand the procedures which they plainly followed. (P. App. 3a)

Contrary to the claims which the students are now advancing, the regulations do not involve the prior restraint

of a license without narrow, objective and definite standards. Uncontradicted testimony given by one of the students in the hearing below clearly shows that the College does not require the registrant of a demonstration to advise the College of the purpose of the demonstration. Moreover, once registration has been made, "automatic approval" of the registration follows. (P. App. 3a) As the Court of Appeals properly found,

> the regulations, neither by their language nor by their application, are instruments for censoring or controlling the purpose or content of a demonstration. (P. App. 3a)

The students' reference to the summary punishment provision is not only improper because it was not raised below, it is also inaccurate. In practice there can be no summary discipline since the regulations authorize an appeal from any disciplinary action. (P. App. 48a) And, significantly, that provision is not involved in this case.

The students' last contention in this portion of their brief is that the Court of Appeals should have considered the regulations in a vacuum, ignoring the fact that other locations are afforded for demonstrations and that other methods of expressions are permitted inside buildings. Such an approach would be unworthy of a judicial body. *Cf. Abernathy* v. *Conroy, supra.* Here the court recognized the need for allowing the students some means of meaningful expression. Finding that meaningful expression was afforded to the students, the Court was free to consider the reasonableness of this limited regulation. The approach advocated by the students is squarely inconsistent with *Adderley* v. *Florida, supra,* while that adopted by the Court of Appeals is consistent with the approach authorized by this Court.

ARGUMENT IV

The Students' Conduct Was Not Constitutionally Protected And They Have No Standing To Challenge The Madison College Regulations.

The students' final contention is that their activities were constitutionally protected. Their suggestion, carried to its reasonable conclusion, is that whenever demonstrators can wrap themselves in the cloak of non-violence they are immune to disciplinary action or criminal prosecution.

This Court has clearly rejected such notions. As the Court of Appeals pointed out, the non-violent nature of the demonstration in *Adderley, supra,* did not save those participants from prosecution. Nor did the peaceful nature of the parade in *Abernathy, supra,* or the peaceful nature of the student demonstration in *Bayless, supra,* save those participants from convictions or disciplinary action.

Tinker, supra, does not help the students here, for that decision clearly stated that it was concerned with "direct, primary First Amendment rights akin to 'pure speech,' " and not with "aggressive, disruptive action or even group demonstrations." 393 U.S. at 508. Thus it is clear that the non-violent nature of conduct is irrelevant when that conduct violates constitutional regulations. (P. App. 13a)

The students suggest that even should the Court find their conduct non-protected they have standing to challenge the Madison regulations. *Cameron* v. *Johnson, supra,* is dispositive of this issue as well as their claim that their conduct was protected. There an anti-picket law was attacked by a group of demonstrators who were threatened with prosecution under the law. In that case "the picketing was, by all accounts, peaceful and without incident. The pickets at first sang, chanted, preached and prayed. . . . There is no evidence that access to the Courthouse was actually obstructed. . . . The

pickets confined themselves to the line of march designated by the police themselves, and they were quiet and orderly." 390 U.S. at 624-625 (Fortas dissenting)

Nevertheless, the *Cameron* Court upheld the law. Distinguishing *Dombrowski* v. *Pfister, supra,* the Court first found that the law was not vague. The Madison College regulations are not vague and the students have even conceded that before the Court of Appeals. The *Cameron* Court next found that the statute was not overly broad because the conduct which it prohibited was subject to regulation so as to vindicate important interests of society. The Madison College regulations are not overly broad because a prohibition against demonstrating inside buildings is similarly necessary to vindicate important interests of society. This Court further distinguished *Dombrowski, supra,* relied on by the *Cameron* appellants and by the students here because those appellants were unable to show that the State was proceeding against them in bad faith, a showing which is necessary to trigger the standing exceptions carved out in *Dombrowski.* There is no suggestion that the Madison College officials were motivated by bad faith and the students do not claim so.

Dombrowski is also distinguishable because even assuming the Madison College regulation is vague or overly broad, it was not applied in such a manner to the students in this particular case, as the Court of Appeals so found. *Younger* v. *Harris,* ..... U.S. ....., 91 S. Ct. 746, 752 (1971).

CONCLUSION

Madison College seeks only to prohibit one conduct-oriented method of First Amendment expression in limited circumstances, that is, it prohibits demonstrations inside buildings. It allows virtually without limitation the same method to be used out-of-doors. Madison College also allows

students to avail themselves of the more pure forms of First Amendment expression inside buildings. The prohibition against demonstrating inside buildings is reasonable. It is not vague nor is it overly broad.

The students have no standing to attack other portions of the regulations as those portions were not applied to the students or the students failed to raise them in a timely fashion.

The decision of the Court of Appeals is consistent with both the decisions of this Court and the decisions rendered in other Circuits. Moreover, it is plainly correct.

Accordingly, respondents pray that this Court refuse to issue the writ of certiorari sought by the students.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that three copies of the foregoing brief were mailed to Melvin L. Wulf, American Civil Liberties Union Foundation, 156 Fifth Avenue, New York, New York 10010 this 1st day of November, 1971.

ANDREW P. MILLER

APPENDIX

APPENDIX A

MOTION FOR DECLARATORY RELIEF

Pursuant to the the decree entered by this court on 26 May, 1970 in the above styled matter the petitioners respectfully request this court to reinstate this matter on the docket and grant to them the declaratory relief requested for the following reasons:

1. Rules 1 and 4 of the Madison College Student Handbook Regulations on Demonstrations and Peaceful Assembly are violative of the First and Fourteenth Amendments to the Constitution of the United States as being overbroad in their scope as to inhibit and prevent the valid exercise of protected rights of expression and assembly.

2. Rules 1 and 4 of the Madison College Student Handbook Regulations on Demonstrations and Peaceful Assembly make no differentiation between peaceful and non-peaceful demonstrations. Lacking such a standard these rules give to the administration of Madison College an unlimited power to contravene the protected constitutional rights of the students of Madison College.

3. Under the circumstances of the events of April 26, 1970 which constituted a peaceful assembly of students in an open building, to which all students had unlimited access at all times, the application of the Rules 1 and 4 against these students constitutes an attempt by the respondents to suppress the rights of the petitioners and all others similarly situated to freedom of expression and assembly.

4. Petitioners adopt, for the purpose of this motion, the pleading and transcript of the hearing of May 21, 1970 in the above styled matter, requesting, however, the right to present such relevant additional and new evidence as might be necessary.

5. After the temporary restraining order of May 13, 1970 was dissolved by order of this court on May 26, 1970 Respondents, or some of them, proceeded to take disciplinary action against petitioners for violation of Madison College Handbook Rules 1 and 4 and suspended or reprimanded them, or denied them the privilege of attending graduation ceremonies of Madison College; many of the petitioners are now forbidden to return to Madison College in September.

WHEREFORE, the petitioners respectfully pray for the following relief:

a. That this court grant an early hearing on this matter as the petitioners are presently suspended from Madison College as a result of the disciplinary hearings which were completed following the dissolution of the temporary restraining order;

b. That this court declare Rules 1 and 4 of the Madison College Student Handbook Regulations on Demonstrations and Peaceful Assembly as violative of the First and Fourteenth Amendments to the Constitution of the United States, either on their face or as applied to the petitioner;

c. That this court further declare that the college disciplinary hearings that were predicated on violations of Rules 1 and 4 were illegal and void;

d. That if in the future the officials of Madison College and the Commonwealth of Virginia do not reverse and terminate all action against the petitioners now presently pending, this court, in aid of its jurisdiction and the effective enforcement of its decrees, enjoin the continuance of any actions against the petitioners;

e. That this court grant to the petitioners costs of court and reasonable attorneys' fees; and,

f. That this court grant to the petitioners any other relief which they be entitled.

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By Counsel

APPENDIX B

MOTION FOR SUMMARY JUDGMENT

Pursuant to rule 56(a) of the Federal Rules of Civil Procedure your Petitioners move this court to grant them summary judgment in the above styled matter and put forward the following allegations and reasons in support of said motion:

1. As a result of the pleadings and memoranda filed by both parties and evidence adduced at a hearing held in this matter in the United States District Court for the Eastern District of Virginia in Richmond on 26 May, 1970, there is not any controversy between the parties as to any factual questions so pleaded.

2. The only question in controversy is the constitutionality of Rules 1 and 4 of the Madison College Regulations on Demonstrations and Peaceful Assembly; and at the 26 May hearing the constitutionality of said rules was made an issue in this matter.

3. On the basis of the evidence taken at the 26 May hearing and from memoranda already filed with this court (which will be supported by additional memoranda) Rules 1 and 4, supra, are unconstitutional both on their face and as applied to petitioners, in that said rules are violative of the petitioners' rights of freedom of expression and assembly protected by the First and Fourteenth Amendments to the Constitution of the United States.

WHEREFORE, on the basis of the foregoing, petitioners respectfully request this court to grant to them an early hearing on this motion and as a result of said hearing to render them full judgment with all relief previously prayed for, together with costs of court and reasonable attorneys' fees.

LEWIS SWORD, et al.
By Counsel